

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0175, State of NH v. Raymond Marbury, the court on January 25, 2005, issued the following order:

Following a jury trial, the defendant, Raymond Marbury, was convicted of second degree assault. On appeal, he argues that the State failed to establish extreme indifference to the value of human life and that the trial court erred in denying his request for a mistrial. We affirm.

In considering whether there is sufficient evidence to support the defendant's conviction, we ask whether any rational trier of fact viewing the evidence in the light most favorable to the State could have found the defendant guilty beyond a reasonable doubt. State v. Fletcher, 129 N.H. 641, 643 (1987). An attacker acts with extreme indifference to the value of human life when he inflicts any degree of bodily injury on the victim and when the circumstances of the attack demonstrate a blatant disregard for the risk to the victim's life. Id. at 644 (emphasis added); see State v. Saucier, 128 N.H. 291, 297-98 (1986) (circumstances of crime, not injuries charged, must manifest extreme indifference).

In this case, the victim testified that the defendant punched her in the face and head repeatedly, continuing to do so even after she began bleeding profusely. Subsequent X rays revealed that he had broken her nose. The treating physician at the emergency room testified that repeated blows to the head could put a victim's life at risk depending upon the number and severity of blows. Based upon the record before us, we conclude that the jury could have rationally concluded beyond a reasonable doubt that the defendant's acts manifested extreme indifference to the value of his victim's life.

The defendant also argues that, because its curative instruction failed to cure the prejudice caused by the inadmissible testimony of the defendant's previous abuse of the victim, the trial court erred in denying a mistrial. Absent an unsustainable exercise of discretion, we will sustain the trial court's denial of a request for mistrial due to its unique ability to gauge the reaction of the jury to any potentially prejudicial information. State v. Scognamiglio, 150 N.H. 534, 537 (2004).

In this case, the trial court ruled the testimony inadmissible and instructed the jury to disregard all of the witness's testimony. The witness testified that when she saw the victim following the assault, she said, "Miko beat you up again." The trial court found that her testimony was not so prejudicial

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that a curative instruction would not correct it because the defendant admitted causing the injury. Based upon the record before us, we conclude that the trial court's exercise of discretion was sustainable. The victim's testimony was compelling; her description of her injuries was verified by the emergency room doctor. The defendant's argument that the jury might be prejudiced by believing he was "an abuser engaged in a pattern of domestic violence" and therefore "deserve the severest legal punishment" is negated by the jury's finding that he was not guilty on one of the two counts of second degree assault.

Affirmed.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox
Clerk**

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